

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The petitioners and SRS entered into a written, initial "Adoption Assistance Agreement" in July of 1996. That document declared in its preamble that the child as a recipient of a federal adoption subsidy is "eligible for Title XX Social Services" whose "benefits vary from state to

state." Under Section I of the agreement labeled

"Provisions", Title XX services are further discussed:

B. Cash Payment:

. . . .

Title XX services are the entire array of services as provided by the Social Services Block Grant. Funded services may vary from year to year and from state to state, but in whole are fairly consistent. Some typical services included in a block grant are child care subsidies, the Parent's Assistance Line, transition to independence services for youths age 16-18.

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C. Medical Care and Special Services:

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3. Social Services as provided under Title XX of the Social Security Act will be available to the adopted child eligible for Federal adoption assistance in accordance with the procedures of the State in which the adopted child resides. Services provided under Title XX vary with the state of residence. Social Services for adopted children not eligible for Federal adoption assistance may be available under the normal application procedure and guidelines for such services.

3. Pursuant to provisions in the agreement which allow for mutual modification, SRS and the petitioners amended that agreement in June of 2001 to meet the increased needs of the child by increasing the subsidy and adding some post-adoption services not related to Title XX. All of the provisions set

forth in paragraph 2 above were included in the amended agreement.

4. Since the initial agreement and continuing to the present, the petitioners have applied for and received child care subsidy benefits at the one hundred percent level of payment. CDD has required the petitioners to file applications, first every six-months and more recently every twelve-months in accordance with its procedures. CDD has required the petitioners to show a "service need" for the day care subsidy but has waived income requirements because of the adoption subsidy.

5. The most recent redetermination of eligibility for a child care subsidy occurred during May and June of 2005. CDD asked the petitioners to verify their "service need", their household income and money paid out in child support in a letter dated May 13, 2005. Enclosed with the letter was an application form. The form advised parents with adoption subsidy agreements to enclose a copy of that agreement.

6. The petitioners returned the form dated June 12, 2005. On the application the petitioners reported that the wife was employed full-time and that her income was from wages which were not specified. The request was for after-school day care during the school year and full-time in the

summer for their eleven-year-old adopted daughter. In response to a question on the form about the second parent's (husband's) scheduled work hours, he responded, "She is federally eligible, what I am up to is none of your concern. [Child's name] has an adoption contract that I wish you people would read." The statement was signed by the husband.

7. CDD found the petitioners eligible based on that application because they do not consider their income due to the adoption subsidy and find a "service need" in the fact that the child is in a "protective services" status as evidenced through the Adoption Assistance Agreement, as currently amended.

8. CDD mailed several notices of eligibility to the petitioners stating that they had been found eligible for 100 percent of the subsidy amount, and that beginning June 26, 2005, the full-time payment for their daughter would be \$20 per day or \$105 per week during the summer and that the payment would be decreased on August 28, 2005 to a part-time payment of \$11 per day or \$59 per week, depending on actual attendance and billing by their day care provider to the Child Development Division. The petitioners were also advised that their provider's rate was in excess of the maximum subsidy and that there would be costs not covered by

the subsidy. The notices stated that the daily rate published by the petitioners' day care provider (\$21.00, full time, \$12.00 part time) was \$1 higher than the subsidy would pay and that the published weekly rate (\$106, full time, and \$60, part time) was \$1 higher than the subsidy would cover.¹ The petitioners were notified that the excess amount would not be covered by CDD.

9. CDD sets child care payment rates annually based on available money. There has been no change in the amount of payment since 2004, although CDD has moved from a daily to a weekly rate of payment which caused an official 81 cent decrease in the daily rate. However that new accounting system results in the same payment for those eligible for a 100 percent subsidy on a weekly basis. CDD pays providers directly for care by fractions of a week and will only pay approved day care providers.

10. The petitioner does not claim that CDD is paying less than last year although he says that he thinks it is better to pay by a daily rate. His complaint is that his provider sold the day care and that the new purchaser is charging \$17 for a partial day of day care. He says that he

¹ Apparently there is some economy in a weekly billing over a daily billing. If the child was in attendance for less than a full week, a daily rate would presumably apply.

cannot afford to pay the difference. Finding alternate day care is difficult in his remote part of the state as there are few registered day care providers. The petitioner believes that he would be able to find someone who takes the state rate if he could use an unregistered day care provider. He maintains that his contract with CDD requires them to pay the total cost of his child's day care and that he should not have to pick up the difference. He also maintains that he should be exempt from annual application requirements due to the adoption subsidy.

ORDER

The decisions of CDD to pay only the maximum fee schedule for their day care and to require the petitioners to file an annual application is affirmed.

REASONS

Both the agreement initially signed by the petitioners in 1996 and again in 2001 clearly advise the petitioners that they will be eligible for Title XX services for their child, including day care services. However those agreements also clearly inform the petitioners that "funded services may vary from year to year" and that the services would be available "in accordance with the procedures of the state."

The procedures used by CDD at present require an annual application for all persons who receive subsidies. The petitioners are correct that the form applications used by CDD ask many questions that are not pertinent to their case and CDD has conceded that their income is waived and that their "service need" is established by virtue of the adoption subsidy. However, that does not excuse the petitioners from confirming for the day care subsidy program on an annual basis that they are still receiving an adoption subsidy, are still using day care services, and the days and times their child attends day care as well as the name of the provider. The petitioners are free not to answer any questions on the form which they feel are not pertinent. However, they are not exempted by virtue of their receipt of the adoption subsidy from filing the annual application. The agreement makes it clear that they are still subject to the procedures, if not the financial guidelines, used to establish eligibility for this Title XX program.

Although it does not appear that the level of funding for daycare has changed in the last year (as opposed to the accounting method), the contract signed by the petitioner advises them that the level of funding can change. What appears to have actually changed is not the amount of the

state's day care payment but rather the rate charged by the provider, a figure over which CDD has no control. There is nothing in the adoption subsidy agreement which says that DCF will pay one hundred percent of the petitioner's day care expenses. The contract does say that the petitioners will receive whatever benefits are available at the time under the Title XX program. What is currently available under the Title XX program is a maximum payment per week of \$106 for full-time care and \$60 for part time care. The petitioners have been found eligible to receive 100 percent of that amount. They are entitled to no further payment for day care under either the contract or CDD's rules. Thus the Board is bound to affirm their decision. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

The petitioners' last grievance is that CDD will only make payments on their behalf to state-approved child care providers but not others who might accept CDD's payment in full. CDD is specifically forbidden by statute from making payment to any provider who has not been authorized by CDD to provide day care. 33 V.S.A. § 3511(2). This generally means licensed facilities and registered day care homes but can also include persons who are specially approved to receive payments for a particular child, a "Legally Exempt Child

Care" provider. The petitioners are advised that if they can find someone willing to care for their child for the subsidized amount, that person can submit his or her name to CDD for approval for that purpose.

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